

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Summons for Judgment No.161 of 2004

in

Summary Suit No. 3713 of 2003

Sumeet Revari ... Plaintiff

vs

Prakash Shah ...Defendant

Ms Kavita Shah i/b A G Shah for plaintiff

Mr. P N Joshi i/b R.M.Haridas for defendant

CORAM: S.J.VAZIFDAR J.

Dated 25.1.2005

P.C:

1. The suit is filed on the basis of a dishonoured cheque. The fact that the defendant received the amount from the plaintiff is not denied. The fact that the defendant issued the cheque is not denied. The fact that the cheque was dishonoured is also not denied. The only defence raised is that the defendant knew that the cheque was going to be dishonoured and, therefore, on the very next day the amount was paid by cash to one Harish Hassija, broker through whom the initial loan was transacted. The payment is sought to be justified on the basis of an alleged letter of authority dated 28th September 2000 addressed by the Constituted Attorney of the plaintiff to one Varsha Revari. The plaintiff has contended that the said alleged letter of authority is fabricated, that the

Plaintiff's firm does not even have letter heads.

2. It is pertinent to note that it is not even the defendant's case that he has personal knowledge of the plaintiff having executed the said letter of authority. It is not even the case of the defendant that he met the plaintiff and/or plaintiff's Constituted Attorney to confirm the authority. Further it is pertinent to note that on 28th March 2001 the plaintiff's advocate addressed a letter to the defendant demanding payment of the said amount. The suit was filed on 25th September 2003. Thus for one and half year there was no reply to the advocate's notice. No action to date has been taken by the defendant against the said broker.

3. In the circumstances conditional leave to defend is granted to the defendant upon the defendant depositing in this court a sum of Rs.1,25,000 within twelve weeks from today.

4. In the event the defendant deposits the aforesaid amount, the suit to stand transferred to the list of Commercial Cause. The defendant to file his written statement within 30 days. Discovery and inspection within four weeks

thereafter.

5. In the event the defendant fails to deposit the aforesaid amount, liberty to the plaintiff to apply for further orders.

6. On the said deposit being made, the Prothonotary and Senior Master to invest the same in any Nationalised Bank initially for a period of two years and shall renew the same thereafter for a period of one year from time to time.

7. Summons for judgement stands disposed of accordingly.

Parties to act on an ordinary copy of this order duly authenticated by the Associate/ Private Secretary.